(18,905.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 266.

C. E WYNN-JOHNSON, PLAINTIFF IN ERROR,

vs.

JAMES M. SHOUP, UNITED STATES MARSHAL FOR THE DISTRICT OF ALASKA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 22, 1904.

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1 UNITED STATES OF AMERICA, } ss:
District of Alaska, Division No. 1, }

Pleas and proceedings began and held in the district court of the United States for the district of Alaska, at the October term, 1901.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.* No. 138.

On October 29th, 1901, the plaintiff filed his petetion in said cause, which is in words and figures following, to-wit:

2 In the United States District Court for the District of Alaska, Div. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

To the Honorable Melville C. Brown, judge of the United States district court for the district of Alaska, div. No. 1:

The petition of C. E. Wynn-Johnson respectfully shows:

That the said C. E. Wynn-Johnson is unlawfully imprisoned, detained, confined and restrained of his liberty by James M. Shoup, United States marshal for the district of Alaska, division No. 1.

That the said imprisonment, detention, confinement, and restraint are illegal; and that the illegality thereof consists in this:

That the said C. E. Wynn-Johnson, together with a certain Moore's Wharf Company, of Skagway, (of which said Moore's Wharf Company your petitioner then was and still is the general manager) was wrongfully and unlawfully indicted by the grand jury, then sitting at said Skagway, within said division No. 1. within and for the said district of Alaska, for an alleged violation of section 461, of the Alaska Criminal Code, to wit: for the crime of doing and carrying on unlawfully, wilfully and knowingly, the business of a public wharf, at said Skagway, Alaska, without first applying for and obtaining the license so to do from the said United States district court for Alaska, division No. 1.

That pursuant to said indictment and charge, your petitioner was arrested by said James M. Shoup, United States marshal aforesaid, upon and by virtue of a warrant issued out of and under the seal of this court, and by reason of such said warrant your petitioner is now restrained and imprisoned, as above mentioned.

3 That the said section 461 of said Alaska Criminal Code, for the alleged and charged violation of which section, your peti-

tioner is unlawfully imprisoned, detained, confined and restrained of his liberty, as aforesaid, is unconstitutional and inoperative, unreasonable and of no effect, so as to compel a compliance with the terms of said section by your petitioner.

Wherefore, your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said James M. Shoup, United States marshal for the district of Alaska, division No. 1, commanding him to have the body of the said C. E. Wynn-Johnson before your honor, at a time and place therein, to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with a time and cause of his detention, and said writ; and that he may be restored to his liberty.

Dated, this 29th day of October, 1901.

C. E. WYNN-JOHNSON.

UNITED STATES OF AMERICA, *District of Alaska,* } *ss:*

C. E. Wynn-Johnson being first duly sworn says: I am the petitioner above named, that I have read the foregoing petition and know the contents thereof, that the same is true, as I verily believe.

C. E. WYNN-JOHNSON.

Subscribed and sworn to before me this 29th day of October, 1901.

[SEAL.]

F. D. KELSEY,
Notary Public for Alaska.

(Endorsed:) No. 138 In U. S. dist. court for Alaska; div. No. 1 In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus.* Petition. Filed Oct. 29 1901 W. J. Hills, clerk, by —— —— deputy. J. G. Heid, att'y for petitioner.

4 In the United States District Court for the District of Alaska, Div. No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

On reading and filing the petition of C. E. Wynn-Johnson duly signed and verified by him, whereby it is alleged that he is illegally imprisoned and restrained of his liberty by James M. Shoup, U. S. marshal for the district of Alaska, division No. 1. at Skagway in said district in said division, and stating wherein the illegality consists, from which it appears to me that a writ of *habeas corpus* ought to issue:

It is ordered that a writ of *habeas corpus* issue out of and under the seal of the United States district court, for the district of Alaska, division No. 1. directed to the said James M. Shoup U. S. marshal as

aforesaid, commanding him to have the body of the said C. E. Wynn-Johnson before me, in the court room of the said court, at Skagway in said district, on the 29th day of October 1901, at 3½ o'clock p. m. of that day, to do and receive what shall then and there be considered concerning the said C. E. Wynn-Johnson, together with the time and cause of his detention, and that he have then and there the said writ.

Dated on the 29th day of October, 1901.

By the court:

M. C. BROWN, *Judge.*

(Endorsed:) No. 138. In U. S. district court, dist. of Alaska, div. No. 1. In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*. Order for writ. Filed Oct. 29 1901 W. J. Hills, clerk, by —— —— deputy.

5 In the United States District Court for the District of Alaska, Div. No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

An indictment having been found on the 10th day of December 1900, in the district court, for the district of Alaska, division No. 1, charging the above named C. E. Wynn-Johnson with the crime of doing and carrying on unlawfully, wilfully and knowingly the business of a public wharf at Skagway, Alaska, without first applying, paying for and obtaining the license so to do from the United States district court for the district of Alaska, division No. 1. And upon the granting of a writ of *habeas corpus* in his behalf, and having been duly admitted to bail in the sum of twenty five hundred dollars:

We, Lee Guthrie, of the town of Skagway, Alaska, by occupation merchant and J. Bernard Moore, of said town of Skagway, Alaska, by occupation warehouseman, hereby undertake that the above named C. E. Wynn-Johnson, will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted will appear for judgment and render himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the United States of America the sum of twenty five hundred (2500) dollars.

LEE GUTHRIE.
J. BERNARD MOORE.

6 UNITED STATES OF AMERICA, *District of Alaska,* } *ss:*

Lee Guthrie and J. Bernard Moore whose names are subscribed as sureties to the above undertaking, being severally sworn, each

for himself says, that he is a resident and a householder within the district of Alaska, and *the* he is worth the sum specified in the said undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

LEE GUTHRIE.
J. BERNARD MOORE.

Subscribed and sworn to before me this 29th day of October, 1901.
[SEAL.] F. D. KELSEY,
Notary Public for Alaska.

UNITED STATES OF AMERICA, } ss:
Dist. of Alaska, Div. No. 1, }

The above and foregoing bond & the sureties thereon are hereby approved by the court this 29th day of October, 1901.

M. C. BROWN, *Judge.*

(Endorsed:) No. 138 In U. S. dist. court for Alaska, div. No. 1. In the matter of the application of C. E. Wynn-Johnson, for a writ of *habeas corpus.* Undertaking. Filed Oct. 29 1901 W. J. Hills, clerk, by —— —— deputy.

7 In the United States District Court for the District of Alaska, Div. No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

James M. Shoup, U. S. M., Greeting:

We command you, that you have the body of C. E. Wynn-Johnson by you imprisoned and detained, as is said, together with the time and cause of such imprisonment and detention, by whatsoever name said C. E. Wynn Johnson shall be called or charged, before Melville C. Brown, judge of the United States court for the district of Alaska, division No, 1. at the court room of said court at Skagway, in said district of Alaska, on the 29th day of October 1901, at 3½ o'clock in the after-noon of that day, to do and receive what shall then and there be considered concerning the said C. E. Wynn-Johnson. And have you then and there this writ.

Witness, Hon. Melville C. Brown, judge of the said court, at the court room thereof, in the city of Skagway, district of Alaska, this 29th day of October, 1901.

Attest, my hand and the seal of the said court, the day and year last above written.

[SEAL.] W. J. HILLS, *Clerk.*

8 UNITED STATES OF AMERICA, } ss:
Division No. —, District of Alaska,

I James M. Shoup, U. S. marshal for the district of Alaska, division No. 1, hereby certify that I received the within writ at Skagway, Alaska, on October 29, 1901; that I have the person named therein, C. E. Wynn-Johnson, in my custody; that he is detained upon a charge of operating a public wharf at Skagway, Alaska, without having first obtained a license so to do, in violation of section four hundred and sixty, chapter forty-four, title two of the act entitled "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," approved March 3, 1899, as amended by the act entitled "An act making further provision for a civil government for Alaska, and for other purposes," approved June 6, 1900; that he is detained by virtue of a certified copy of an undertaking executed on March 12, 1901, for his appearance upon said charge, and approved on said date, the sureties in said undertaking having this day surrendered the defendant to my custody in their exoneration; a copy of said certified copy of undertaking is annexed hereto and made a part of this return, and I now produce the original certified copy; in obedience to the command of the within writ I now produce the body of the said C. E. Wynn-Johnson before the Hon. M. C. Brown, judge of the U. S. district court, district of Alaska division No. 1.

Dated at Skagway, Alaska, October 29, 1901.

JAMES M. SHOUP,
U. S. Marshal, District of Alaska, Division No. 1.

An indictment having been found on the 10th day of December 1900, in the district court, for the district of Alaska, division No. 1. charging C. Wynn-Johnson, with the crime of operating a public wharf at Skagway, in the district of Alaska, without having first obtained a license so to do, and he having been duly admitted
9 to bail in the sum of two hundred dollars: We, E. J. Shaw of Skagway, Alaska, by occupation, cashier Moores wharf and H. B. Runnalls, by occupation physician & surgeon, of Skagway, Alaska, hereby undertake that the above named, C. Wynn-Johnson shall appear and answer the indictment above named in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court, and if convicted, shall appear for judgment, and render himself in execution thereof, or if he fail to perform either of those conditions, that he will pay to the United States, the sum of two hundred dollars.

Dated at Skagway, Alaska, this 12th day of March, 1901.

E. J. SHAW.
H. B. RUNNALLS.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

I, E. J. Shaw and H. B. Runnalls, being duly sworn on oath say each for himself, and not one for the other, that I am surety on the above and foregoing undertaking, and that I am a resident of the district of Alaska, and a householder therein; that I am neither an attorney or counsellor at law, clerk, marshal or other officer of any court in the district of Alaska, and that I am worth the sum of two hundred dollars over and above all my just debts and liabilities and exclusive of property exempt from execution.

E. J. SHAW.
H. B. RUNNALLS.

Subscribed and sworn to before me this 12th day of March, 1901.

C. A. SEHLBREDE,
Commissioner & Ex-officio Justice of Peace.

Taken and acknowledged before me this the day and year above written.

C. A. SEHLBREDE,
Commissioner & Ex-officio Justice of Peace.

10 The above and foregoing undertaking is approved by me this 12th day of March, A. D. 1901.

C. A. SEHLBREDE,
Commissioner & Ex-officio Justice of Peace.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

I, W. J. Hills, clerk of the United States district court, division No. 1, district of Alaska, do hereby certify that the foregoing is a full, true and correct copy of appearance bond, in the case of The United States *vs.* Moores Wharf Company & C. Wynn-Johnson, as fully as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Skagway, in said district, this 18 day of May, A. D. 1901.

[L. S.]

W. J. HILLS, *Clerk,*
By J. J. ROGERS, *Deputy.*

To James M. Shoup, Esq., U. S. marshal for Alaska:

We, the undersigned, sureties on the within undertaking, hereby surrender to you and place into your custody the within named C. E. Wynn-Johnson, and direct you to arrest the said C. E. Wynn-

Johnson, and keep him in your custody so as to release the undersigned sureties from all liability by reason of the within undertaking. Oct. 29, 1901.

H. B. RUNNALLS.
E. J. SHAW.

Office of U. S. marshal, district of Alaska, division No. 1.

OCTOBER 29, 1901.

I certify the above and foregoing to be a true copy.

JAMES M. SHOUP,
U. S. Marshal, District of Alaska, Div. No. 1.

11 I hereby acknowledge the surrender of the within named C. E. Wynn-Johnson into my custody this 29 day of Oct. 1901.

JAMES M. SHOUP,
U. S. Marshal.

(Endorsed:) No. 138 In U. S. district court for Alaska; div. No. 1. In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*. Writ of *habeas corpus*. Returned & filed Oct. 29 1901 W. J. Hills, clerk, by —— —— deputy.

In the United States District Court for the District of Alaska, Division Number One.

In re the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

And now on this 29th day of October, 1901, James M. Shoup, the United States marshal for division number one of the district of Alaska having returned into court, on the writ herein issued under the order of court the said C. E. Wynn-Johnson, as required
12 by the terms of said writ, and the United States district attorney and the attorney for the said Johnson not being prepared for the argument of the question now before the court, viz: whether the said C. E. Wynn-Johnson is unlawfully deprived of his liberty; and the court on motion of the said C. E. Wynn-Johnson by his attorney having postponed the said hearing until Friday, the 20th day of December, 1901 at Juneau, Alaska, and the said C. E. Wynn-Johnson being subject to the order of this court and desiring to give bail for his appearance before the court at that time,

It is ordered by the court, that James M. Shoup, United States marshal as aforesaid, be and he is hereby relieved from all further custody of the said C. E. Wynn-Johnson until the hearing of this matter, and that the said Johnson be and he is hereby permitted to

give bond to the United States for his appearance at the hearing aforesaid in the sum of two thousand five hundred dollars ($2500.00); whereupon, the bond of the said Johnson being now presented to the court for approval it is ordered that the same be and is hereby approved and accepted to secure the appearance of the said Johnson at the time and place aforesaid, and the said Johnson is discharged from custody until such hearing may be had.

Done in open court &c.

(Endorsed:) No. 138 *In re habeas corpus* C. E. Wynn-Johnson Filed Oct. 29 1901 W. J. Hills, clerk, by —— —— deputy.

13 In the United States District Court for the District of Alaska, Division No. 1.

In re C. E. WYNN-JOHNSON, Petitioner,
v.
JAMES M. SHOUP, as United States Marshal for the District of Alaska, Division No. 1.
} On Writ of *Habeas Corpus.*

At the Skagway October 1901 term of the court one C. E. Wynn-Johnson and the Moore's Wharf Company were jointly indicted under sections four hundred and sixty and four hundred and sixty-one of the crimes act of the dis rict of Alaska, for conducting a wharf &c. without first having obtained a license therefor as required by law. A bench warrant was issued upon said indictment and the said C. E. Wynn-Johnson taken into custody by the United States marshal, and brought into court. The said Johnson having failed and refused to give bail as required by law, he was retained in the custody of the United States marshal, and while so in custody he brought this proceeding in *habeas corpus* and prays to be discharged from custody.

No objection is made to the indictment, either in form or substance, or to the writ under which the United States marshal holds the said Johnson in custody; but counsel for said Johnson alleges that the statute requiring the payment of this license fee is unconstitutional and void, and that the said Johnson should be discharged from custody for that reason. The alleged unconstitutionality of the act of Congress is predicated upon the claim that such statute is in violation of that provision of the Constitu-
14 tion requiring uniformity in the laying and collection of taxes in the district of Alaska; in other words, that it is in violation of the first clause of sec. 8, art. 1, of the Constitution of the United States, which reads as follows:

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States."

The acts of Congress providing for customs duties and internal revenue have for years been extended to Alaska by express act of Congress, and all such collections of taxes and the laws under which made, were in force in Alaska at the time the act in question was passed. It will also be remembered that by the acts of Congress, the Constitution of the United States and its beneficent provisions has been extended to Alaska, impliedly, at least, if not in express terms.

Under the laws of the United States license taxes of the form attempted to be enforced in Alaska are not collected in any other part of the United States. On the face of the proposition it would seem that the question of uniformity of taxation under the Constitution, is fairly raised. This question was considered at great length by the Supreme Court of the United States in the case of Downes *v.* Bidwell and the other "insular cases," and the arguments on all sides were practically exhausted.

It is a settled theory of the law that the Congress of the United States may create territorial governments in the territory belonging to the United States, under circumstances which seem to Congress sufficient to require such action. It has been the uniform
15 practice of the Congress in establishing these territorial forms of government, to provide for a system of taxa- whereby such government- when established, might be self-sustaining, if not wholly, at least to a very large degree. If Congress has power to authorize a territorial legislature to provide a system of taxation for a Territory—and this is unquestioned,—surely any power that Congress might delegate to another legislative body, it could exercise by direct legislation. That Congress may provide by direct legislation a system of taxation for the support of local government in the Territories and districts of the United States is, we think, practically unquestioned. Whether then, the question of uniformity of taxation arises under the statute now under consideration, depends, it would seem, upon the use of the moneys to be collected under this license law. If for support of local government in the district of Alaska, no question of uniformity can arise. If for general purposes of the United States and to be covered into the Treasury of the United States for general purposes, then the burdens placed upon the citizens of Alaska are excessive and not uniform with the taxes levied in other portions of the United States. It therefore becomes necessary, in considering this question, to examine briefly the purposes of Congress in the levy of these license taxes.

Under sec. 7 of the Political Code for Alaska passed June 6, 1900, it is provided that the clerk of the court "shall also receive all moneys collected from licenses, fines, forfeitures, or in any other case, except from violations of the customs laws, and shall apply the same to the incidental expenses of the proper division of the district court, and the allowance thereof as directed by the judge, and shall account for the same in detail and for any balance on account

thereof quarterly, to and under the direction of the Secretary of th Treasury."

It will be observed that under the terms of this section the money realized from the collection of licenses — taxes are to be disbursed for the expenses of the proper division of the district court
16 *and the balance of the money, if any is to be accounted for in report to the Secretary of the Treasury.* Among the items of expenses to be paid by the court is the construction of court houses and jails, the court house not to exceed in cost five thousand dollars, and for a jail, three thousand dollars. It is also provided the *one-half of the moneys* paid in on these license taxes in incorporated towns shall be paid over to the treasurers of such towns for school and other purposes. It is further provided that *one-half the moneys collected outside incorporated towns and to be turned into the Treasury of the United States* is to be expended for school purposes under the direction of the Secretary of the Interior.

It will be observed, therefore, that the larger portion of all the moneys collected from license taxes are to be expended for the purpose of local government within the district; but in the tenth section of the same act of Congress making further provision for a civil government in Alaska, it is provided,

"Each clerk shall collect all moneys arising from the fees of his office or on any other account authorized by law to be paid or collected bt him * * * and any balance remaining in his hands, after all payments ordered by the court shall be made, shall be by him covered into the Treasury of the United States at such times and under such rules and regulations as the Secretary of the Treasury shall prescribe."

Does this language "covered into the Treasury of the United States" necessarily mean that the money shall go into the Treasury for general purposes and to be paid out upon appropriations made by the Congress of the United States? If this is the necessary construction of the statute, and if there be any such balance to go into the United States Treasury, it would seem that as to such balance there was a gathering of taxes contrary to the constitutional provision of uniformity. It is a fact about which there can be no dispute that the expenditures of the General Government
17 for local government in the district of Alaska far exceeds the moneys collected from license taxes; but the salaries of officers, such as governor, secretary, judges, marshals &c. are paid out of the national Treasury on appropriations made by Congress from moneys in the Treasury of the United States. Such expenditures on appropriations made by Congress, though for the support of local government in Alaska, can hardly be deemed the application of moneys realized from the collection of license taxes within the district of Alaska, to the support of local government in said district. But where the language of the statute is "covered into the Treasury of the United States * * * under such rules and regulations as the Secretary of the Treasury may prescribe," such "rules and

regulations" might refer to the purpose for which the money was to be paid into the Treasury and *and* that purpose, its expenditure for local government.

Should we not therefore indulge in the presumption that by the use of the words "covered into the Treasury under rules and regulations prescribed by the Secretary of the Treasury" that Congress intended money should be covered into the Treasury for lawful purposes viz. to be expended for local government rather than for an unlawful purpose, in violating the constitutional provision of uniformity.

It may be said in this connection that statutes should be given such a construction as will effectuate their purpose where that is possible, and that no statute should be held invalid if it can be so construed, considering all its provisions, as to make it a valid statute. That is, the statute should be given a construction that will make it valid and effectual if it can be fairly done, rather than to give it a construction that will render it void. The legislative body, in passing upon the statute under consideration, has necessarily
18 passed upon its validity and constitutionality, or it would never have been enacted by Congress, or received the signature of the President. Constitutional courts that may properly pass upon the constitutionality of statutes, never hold them unconstitutional and void unless no reasonable construction can be given them that will avoid such necessity. This court is a creature of legislation—is not a constitutional court, but a court created by an act of Congress. It would be a strange conclusion indeed, for the creature of Congress to pronounce void the laws enacted by its creator. Under no circumstances, would this court pronounce the act of Congress providing for these licenses, unconstitutional and void. It is the opinion of this court that any such action would be a wrongful assumption of power and authority.

Therefore, without discussing the questions involved in the application for a writ of *habeas corpus*, or the propriety of discharging the said Wynn-Johnson from custody under the claimed unconstitutionality of the license law, the court will refuse to discharge the said Johnson from custody and will remand him to the custody of the United States marshal to be held by him for trial on the indictment presented against him, and it is so ordered.

Dated Juneau, Alaska, June 20th, 1902.

M. C. BROWN, *Judge.*

(Endorsed:) No. 138 In the U. S. district court for the district of Alaska, div. # 1 C. E. Wynn-Johnson, petitioner *v.* James M. Shoup, U. S. marshal, &c. On petition for writ of *habeas corpus.* Decision filed Jun- 20 1902 W. J. Hills, clerk, by —— —— deputy.

19 *Order.*

In the United States District Court for the District of Alaska, Div. No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

This cause having been submitted to the court upon brief of the parties hereto, and the court having had the same under consideration; and now being fully advised in the premises, denies the relief prayed for in the said writ of *habeas corpus* and refuses to discharge the said C. E. Wynn-Johnson from the custody of the United States marshal for division No. 1 of the district of Alaska, all in accordance with the decision this day handed down by the court and placed on file; and the clerk of this court is hereby directed to prepare and deliver to the United States marshal a certified copy of this order directing the said C. E. Wynn-Johnson to be remanded to the custody of the United States marshal to be held by him for trial on the indictment presented against him.

Jun- 20 1902

M. C. BROWN, *Judge.*

(Endorsed:) In the United States district court for the district of Alaska, div. No. 1. In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus.* Order. Filed Jun- 20 1902 W. J. Hills, clerk, by —— —— deputy. Bail fixed at the sum of $5000.00 W. J. Hills, clerk U. S. dist. court for district of Alaska, division No. 1.

No. 1.

20 *Order.*

In the United States District Court for the District of Alaska, Div.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

The relief prayed for under and by virtue of said writ of *habeas corpus* having been on a prior day of this court denied and the defendant remanded to the custody of the United States marshal;

It is ordered by the court that the said defendant be discharged upon his giving to the marshal a good and sufficient bond in the sum of $5000.00 conditioned for his appearance for trial on the first day at the next regular term of this court, and to continue his attendance from day to day thereafter *and* until discharged, or until the further order of the court.

M. C. BROWN, *Judge.*

(Endorsed:) No. 138. In the United States district court for the district of Alaska, div. No. 1. In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*. Order. Filed Jun- 21 1902 W. J. Hills, clerk, by —— —— deputy.

21 In the United States District Court for the District of Alaska, Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

You will please take notice that the defendant, C. E. Wynn-Johnson, in the case of the United States *vs.* Moore's Wharf Company, a corporation, and C. E. Wynn-Johnson, and the applicant in the matter of the application of C. E. Wynn-Johnson, for a writ of *habeas corpus*, above named, hereby appeals to the Supreme Court of the United States, from the judgment therein rendered and entered, in said United States district court, at Juneau, for the district of Alaska, division No. 1, on the 20th day of June, 1902, in favor of the plaintiff, The United States, and against the applicant herein, in the above entitled matter, and from the whole thereof.

Juneau, Alaska, June 20th, 1902.

JOHN G. HEID,
Attorney for Applicant, C. E. Wynn-Johnson.

To the United States of America and Robert A. Friederich, Esq., U. S. attorney for Alaska, div. No. 1:

Due service of a copy of the above notice of appeal is hereby admitted, at Juneau, Alaska, this 20th day of June, 1902.

ROB'T A. FRIEDRICH,
U. S. Att'y for Alaska, Div. No. 1.

(Endorsed:) No. 138 In U. S. dist. court, at Skagway for Alaska; division No. 1. In the matter of the application C. E. Wynn-Johnson, for a writ of *habeas corpus* Notice of appeal Filed Jun- 21 1902 W. J. Hills, clerk, by —— —— deputy. J. G. Heid att'y for applicant.

22 In the United States District Court, at Skagway, for the District of Alaska, Division No. 1.

UNITED STATES OF AMERICA
vs.
MOORE'S WHARF COMPANY and C. E. WYNN-JOHNSON.

An indictment having been found on the 16th day of February, 1901, in the district court of the United States, at Skagway, for the

district of Alaska, division No. 1, charging the Moore's Wharf Company and said C. E. Wynn-Johnson with the crime of prosecuting the business of a public wharf without a license, and he having been duly admitted to bail in the sum of five thousand dollars.

We, Lee Guthrie, of the city of Skagway, Alaska, by occupation, merchant and property owner, and J. Bernard Moore, of said city of Skagway, Alaska, by occupation warehouseman, hereby undertake that the above named C. E. Wynn-Johnson shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and if convicted shall appear for judgment and shall render himself in execution thereof, or if he fail to perform either of those conditions that we will pay to the United States the sum of five thousand dollars.

Witness our hands and seals this 15th day of July, 1902.

C. E. WYNN-JOHNSON. [L. S.]
J. BERNARD MOORE. [L. S.]
LEE GUTHRIE. [L. S.]

23 UNITED STATES OF AMERICA, *District of Alaska,* } ss:

Lee Guthrie, whose name is signed to the foregoing bail bond, being first duly sworn says, that he is a resident and householder within the district of Alaska, and that he is worth the sum of five thousand dollars, over and above all his just debts and liabilities, exclusive of property exempt from execution.

LEE GUTHRIE.

Subscribed and sworn to before me this 15th day of July, A. D. 1902.

[SEAL.] M. H. McLELLAN,
Deputy Clerk.

UNITED STATES OF AMERICA, *District of Alaska,* } ss:

J. Bernard Moore, whose name is signed to the foregoing bail bond, being first duly sworn says, that he is a resident and householder within the district of Alaska, and that he is worth the sum of five thousand dollars, over and above his just debts and liabilities, exclusive of property exempt from execution.

J. BERNARD MOORE.

Subscribed and sworn to before me this 15th day of July, A. D. 1902.

[SEAL.] M. H. McLELLAN,
Deputy Clerk.

(Endorsed:) No. 138. In U. S. district court, at Skagway; for Alaska division No. 1. United States *vs.* Moore's Wharf Co. and C. E. Wynn-Johnson. Bail bond. Filed July 15, 1902. W. J. Hills, clerk, by M. H. McLellan, deputy.

24 *Order.*

In the United States District Court for the District of Alaska, Div. No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

This cause having been submitted to the court upon brief of the parties hereto, and the court having had the same under consideration, and now being fully advised in the premises, denies the relief prayed for in the said writ of *habeas corpus* and refuses to discharge the said C. E. Wynn-Johnson from the custody of the United States marshal for division No. 1 of the district of Alaska, all in accordance with the decision this day handed down by the court and placed on file; and the clerk of this court is hereby directed to prepare and deliver to the United States marshal a certified copy of this order directing the said C. E. Wynn-Johnson to be remanded to the custody of the United States marshal to be held by him for trial on the indictment presented against him.

Jun- 20 1902

M. C. BROWN, *Judge*.

UNITED STATES OF AMERICA, }
First Division, District of Alaska. }

The above is a true copy from the record of an order made by the above court on the 20 day of June 1902.

Witness my hand and the seal of said court this 20 day of June, 1902.

[SEAL.] W. J. HILLS, *Clerk*.

25 UNITED STATES, }
District of Alaska, Division No. 1, } ss:

I certify that the within order came into my hands for service on June 20, 1902, and that I served the same on July 15, 1902, by placing the within named defendant C. E. Wynn-Johnson, under arrest, and that the said defendant did then and there give a good and sufficient bond for his appearance at the October term of the

United States district court, at Skagway, in the sum of $5000.00, and was thereupon released from custody.

Dated Skagway, Alaska, July 15, 1902.

JAMES M. SHOUP,
U. S. Marshal,
By JOHN W. SNOOK,
Deputy U. S. Marshal.

Marshal's fees: 1 service $3.00

(Endorsed:) No. 138. In the United States district court for the district of Alaska, div. No. 1. In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus.* Order. Filed Jul- 15, 1902 W. J. Hills, clerk, by M. H. McLellan, deputy. Bail fixed at $5000.00. W. J. Hills, clerk U. S. dist. court for district of Alaska, division No. 1.

26 In the United States District Court for the District of Alaska Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

Bill of Exceptions.

Be it remembered that the above entitled matter came on regularly to be heard at Juneau, Alaska, on the 20th day of June, 1902 before the Honorable Melville C. Brown, district judge for the said district of Alaska, division No. 1; the applicant, C. E. Wynn-Johnson, appearing by John G. Heid, his attorney, and the United States being represented by Robert A. Friederich, Esq., U. S. attorney for Alaska, said division No. 1, at which time the following proceedings were had and taken:

In the United States District Court for the District of Alaska Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

This cause having been submitted to the court upon the brief of the parties hereto, and the court having had the same under consideration, and now being fully advised in the premises
27 denies the relief prayed for in the said writ of *habeas corpus* and refuses to discharge the said C. E. Wynn-Johnson from the custody of the United States marshal for division No. 1, of the district of Alaska, all in accordance with the decision this day handed down by the court and placed on file; and the clerk of this

court is hereby directed to prepare and deliver to the United States marshal a certified copy of this order directing the said C. E. Wynn-Johnson to be remanded to the custody of the United States marshal to be held by him for trial on the indictment presented against him.

Jun- 20, 1902.

M. C. BROWN, *Judge.*

To which decision and ruling of the court, applicant, the said C. E. Wynn-Johnson, by his counsel, then and there excepts, and an exception to said decision and ruling of the court was allowed to said applicant.

Endorsed: No. 138. In the U. S. district court, for Alaska, div. No. 1, at Skagway. In the matter of the application of C. E. Wynn-Johnson, for a writ of *habeas corpus.* Bill of exceptions. Filed Jan. 16, 1903. W. J. Hills, clerk. J. G. Heid, att'y for applicant, C. E. Wynn-Johnson.

28 In the United States District Court for the District of Alaska, Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus.*

Assignment of Errors.

And now comes C. E. Wynn-Johnson, by John G. Heid his attorney, and says that in the records and proceedings in the above entitled matter there is manifest error in this, to-wit:

1.

That the United States district court for the district of Alaska, division No. 1, before which said matter was heard and tried, erred in denying to said applicant, C. E. Wynn-Johnson, the relief prayed for in the said petition for a writ of *habeas corpus*, filed herein by said applicant, and in refusing to discharge the said applicant, the said C. E. Wynn-Johnson, from the custody of the United States marshal, for the district of Alaska, division No. 1.

2.

That the United States district court, for the district of Alaska, division No. 1, erred in deciding and ruling that section 461, of the Alaska Criminal Code, (passed by an act of Congress of the United States), for the alleged and charged violation of which said section of said Alaska Criminal Code, said applicant is unlawfully imprisoned, detained, confined and restrained of his liberty, is constitutional, oper-

ative and of full effect, so as to compel a compliance with the terms of said section by said applicant, the said C. E. Wynn-Johnson.

29 3.

That the United States district court, for Alaska, division No. 1, erred in remanding the said C. E. Wynn-Johnson to the custody of the United States marshal, for the district of Alaska, division No. 1, to be held by said marshal for trial on the indictment presented, as in the record herein set forth.

Wherefore, the said C. E. Wynn-Johnson prays that the judgment of the said United States district court, for the district of Alaska, division No. 1, be reversed, and said U. S. district court for Alaska, division No. 1, be ordered to discharge the said C. E. Wynn-Johnson from custody.

JOHN G. HEID,
Attorney for Appellant, C. E. Wynn-Johnson.

Endorsed: In the U. S. district court for Alaska; division No. 1, at Skagway. In the matter of the application of C. E. Wynn-Johnson, for a writ of *habeas corpus*. Assignment of errors. Filed Jan. 16, 1903. W. J. Hills, clerk. J. G. Heid, att'y for applicant, C. E. Wynn-Johnson.

30 In the United States District Court for the District of Alaska, Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

Petition for Writ of Error.

To the Honorable Melville C. Brown, judge of the United States district court for the district of Alaska, division No. 1:

The petition of C. E. Wynn-Johnson respectfully shows to this honorable court, as follows:

That your petitioner is the applicant for a writ of *habeas corpus*, in the above-entitled matter, and feeling himself aggrieved by the judgment entered thereon, on the 20th day of June, 1902, in pursuance of which said judgment, whereby, it was ordered, adjudged and decreed that, the relief prayed for by said applicant, C. E. Wynn-Johnson, in his petition for a writ of *habeas corpus*, be denied and is denied, and that the said applicant, the said C. E. Wynn-Johnson, be remanded to the custody of the U. S. marshal for the district of Alaska, division No. 1, to be held by said marshal for trial on the indictment presented against him.

Comes now John G. Heid, attorney for the said applicant, C. E. Wynn-Johnson, and petitions said court for an order allowing said

applicant, C. E. Wynn-Johnson, to prosecute a writ of error to the honorable, the United States Supr-me Court, under and according to the laws of the United States of America, in that behalf
31 made and provided and also that an order be made fixing the amount of security which the said applicant, C. E. Wynn-Johnson, shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Supreme Court.

And your petitioner, as in duty bound, will ever pray.

JOHN G. HEID,
Attorney for Applicant, C. E. Wynn-Johnson.

Order.

And now, to wit, on January 19th, 1903, it is ordered that the writ or error be allowed as prayed for.

M. C. BROWN, *Judge.*

Endorsed: No. 138. In U. S. district court, for Alaska, division No. 1, at Skagway. In the matter of the application of C. E. Wynn-Johnson, for a writ of *habeas corpus*. Petition for a writ of error. Filed Jan. 16, 1903, W. J. Hills clerk. J. G. Heid, att'y for applicant C. E. Wynn-Johnson.

32 In the United States District Court for the District of Alaska, Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

Know all men by these presents, that we, C. E. Wynn-Johnson, of the city of Skagway, Alaska, plaintiff in error in the above-entitled matter, as principal, and John Olds, of the city of Juneau, Alaska, as surety, are held and firmly bound unto The United States of America, defendant in error, in the above-entitled matter, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said United States of America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 17th day of January, A. D. 1903.

Whereas, the above-named C. E. Wynn-Johnson is about to sue out a writ of error to the above-named court, to re-examine and reverse in the Supreme Court of the United States, the judgment rendered in the above-entitled matter by said district court of the

United States for the district of Alaska, division No. 1, and to obtain an order and judgment of said Supreme Court of the United States, that the petitioner or plaintiff in error have judgment entered in this court as prayed for in the petition filed herein, and that said plaintiff or petitioner may be restored to his liberty.

Now, therefore, the condition of this obligation is such that if the above-named C. E. Wynn-Johnson, plaintiff in error, shall prosecute his said writ of error to effect and answer all damages
33 and costs if he fails to make said writ of error good, and shall obey all judgments and orders entered against him by said Supreme Court of the United States, under and upon his said writ of error, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. E. WYNN-JOHNSON. [L. S.]
JOHN OLDS. [L. S.]

Executed in presence of—

J. BERNARD MOORE.
JOHN G. HEID.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

John Olds being duly sworn, deposes and says that he is the surety named in and who executed the foregoing bond; that he is a resident and householder within the district of Alaska, and is worth the sum of five hundred dollars, over and above all his debts and liabilities, exclusive of property exempt from execution.

JOHN OLDS.

Subscribed and sworn to before me this 17th day of January, A. D. 1903.

JOHN G. HEID,
Notary Public for Alaska.

The foregoing bond is hereby approved as to form, sufficiency of surety, and manner of execution.

M. C. BROWN, *Judge.*

Endorsed: No. 138. In U. S. district court for Alaska, division No. 1. In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*. Bond on writ of error. Filed Jan. 19, 1903. W. J. Hills, clerk.

34 UNITED STATES OF AMERICA, } ss:
District of Alaska, }

I, W. J. Hills, clerk of the United States district court for the district of Alaska, division No. 1, hereby certify that the above and foregoing and hereunto annexed 33 pages are a full, true and correct transcript of the records and files of all the proceedings of the therein mentioned cause of "In the matter of the application of C. E. Winn-Johnson for a writ of *habeas corpus*, No. 138," as the same remains of record and on file in my office and in accordance with the command in the writ of error in said cause allowed.

I further certify that the costs of preparing and certifying this transcript, amounting to $16.35 have been paid to me by plaintiff in error.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed at the town of Juneau in said district, division No. 1, the 22d day of January, 1903.

[Seal United States District Court, Alaska.]

W. J. HILLS, *Clerk*,
By J. J. CLARKE, *Deputy*.

35 In the United States District Court for the District of Alaska, Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

Writ of Error.

The President of the United States of America to the judge of the United States district court for the district of Alaska, division No. 1, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said United States district court, for the district of Alaska, division No. 1, before you, in the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*, a manifest error hath happened, to the great damage of the said C. E. Wynn-Johnson, plaintiff in error herein, as by his complaint and petition appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at Washington on the fourth Monday of February, next, in the said

Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court
36 may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 19th day of January, in the year of our Lord one thousand nine hundred and three.

[Seal United States District Court, Alaska.]

W. J. HILLS,
Clerk of the U. S. District Court for the District of Alaska, Division No. 1,
By J. J. CLARKE, *Deputy.*

Allowed by
M. C. BROWN, *Judge.*

37 [Endorsed:] No. 138. In U. S. dist. court, for Alaska; div. No. 1, at Skagway. In the matter of the application of C. E. Wynn-Johnson, for a writ of *habeas corpus*. Writ of error.

38 In the United States District Court for the District of Alaska, Division No. 1.

In the Matter of the Application of C. E. WYNN-JOHNSON for a Writ of *Habeas Corpus*.

Citation.

The United States of America to James M. Shoup, United States marshal for the district of Alaska, division No. 1, Greeting:

You are hereby cited and adm-ished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fourth Monday of February, next, pursuant to a writ of error filed in the clerk's office of the United States district court, for the district of Alaska, division No. 1, in the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*, to show cause, if any there be, why the judgment rendered against the said C. E. Wynn-Johnson, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States Supreme Court, this 19th day of January, in the year of our Lord one thousand nine hundred and three.

M. C. BROWN.

Due and legal service of a copy of the above citation is hereby admitted at Juneau, Alaska, this 20th day of January, 1903.

THOS. R. LYONS,
U. S. Attorney for Alaska, Div. No. 1.

39 [Endorsed:] No. 138 In U. S. dist. court for Alaska; div. No. 1, at Skagway In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*. Citation.

Endorsed on cover: File No. 18,905. Alaska D. C. U. S. Term No. 266. C. E. Wynn-Johnson, plaintiff in error, *vs.* James M. Shoup, United States marshal for the district of Alaska. Filed April 24, 1903. File No. 18,905.